

JAN 24 1984

ALEXANDER L. STEVAS.

CLERK

No. 83-1063

In The

Supreme Court
of the United States

October Term, 1983

BRUMLEY ESTATE, et al.,

Petitioners,
vs.

IOWA BEEF PROCESSORS, INC.,

Respondent.

*On Petition For Writ of Certiorari
To The United States Court of Appeals
For The Fifth Circuit*

SUPPLEMENTAL APPENDIX

MIKE McKOOL, JR.
CHARLES W. CUNNINGHAM,
Counsel for Petitioners,

Of Counsel:

JOHNSON & SWANSON
4700 InterFirst Two
Dallas, Texas 75270
(214) 653-2000

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IN THE UNITED STATES DISTRICT COURT
For the Northern District of Texas
Amarillo and Lubbock Divisions

ROBERT D. RUFENACHT,
et al.,

Plaintiffs,

v.
IOWA BEEF PROCESSORS, INC.,
Defendant.

}

CIVIL ACTION
No. CA-2-76-16

PROCHEMCO CATTLE PARTNERS,
LTD, et al.,

Plaintiffs,

v.
IOWA BEEF PROCESSORS, INC.,
Defendant.

}

CIVIL ACTION
No. CA-2-76-33

LUBBOCK FEED LOTS, INC.,
et al.,

Plaintiffs,

v.
IOWA BEEF PROCESSORS, INC.,
Defendant.

}

CIVIL ACTION
No. CA-5-76-6

BRUMLEY ESTATE, et al.,

Plaintiffs,

v.
IOWA BEEF PROCESSORS, INC.,
Defendant.

}

CIVIL ACTION
No. CA-5-76-8

ORDER

The court has received and considered the plaintiffs' motion for summary judgment and the defendant's

motion for partial summary judgment, and the briefs in support thereof and in opposition thereto, and has reviewed the arguments presented by all parties at the November 8, 1977 motions hearing. The court hereby ORDERS:

Plaintiffs' motion for summary judgment on the ground of collateral estoppel is DENIED. The absence of mutuality of the parties in the *Valley View Cattle Co. v. Iowa Beef Processors, Inc.* and the pending cases, notwithstanding, the Fifth Circuit opinion affirming the jury finding of Heller's agency status with IBP expressly states that such jury finding was only as to Heller's purchase of "the cattle in question." The "cattle in question" in *Valley View* did not include the cattle involved in the pending cases. Thus, the collateral estoppel requisite that there be identity of the fact issues essential to the *Valley View* judgment has not been satisfied.

II

The plaintiffs' motion for summary judgment on the basis of Article 6903, TEX. REV. CIV. STAT. ANN. and the defendant's motion for partial summary judgment on the basis of Article 6903, TEX. REV. CIV. STAT. ANN. are DENIED. It is the court's opinion that application of Article 6903 to the cattle transactions in question has not been superseded by adoption of the Uniform Commercial Code in Texas. Although effective, Article 6903 is a directory statute only, making any presumption of illegality arising under Article 6903 rebuttable by facts. Compliance with the Article 6903 "written transfer" requirements, therefore, remains a genuine issue of material fact in the pending cases.

The Clerks will furnish a copy hereof to each attorney.

ENTERED this 17th day of November A.D. 1977.

/s/ HALBERT O. WOODWARD

Halbert O. Woodward
Chief Judge
Northern District of Texas

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**IN THE UNITED STATES DISTRICT COURT
For the Northern District of Texas
Amarillo and Lubbock Divisions**

<p>ROBERT D. RUFENACHT and ROBERT W. LEWIS d/b/a R & L CATTLE COMPANY, v. IOWA BEEF PROCESSORS, INC., Defendant.</p> <p>PROCHEMCO CATTLE PARTNERS, LTD. and PROCHEMCO, INC., v. IOWA BEEF PROCESSORS, INC., Defendant.</p> <p>BRUMLEY ESTATE, et al., v. IOWA BEEF PROCESSORS, INC., Defendant.</p>	<p>Plaintiffs,</p> <p>Plaintiffs,</p> <p>Plaintiffs,</p>	<p>CIVIL ACTION No. CA-2-76-16</p> <p>CIVIL ACTION No. CA-2-76-33</p> <p>CIVIL ACTION No. CA-5-76-8</p>
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ORDER

In each of the above-entitled and numbered causes, the plaintiffs have again filed a motion for summary judgment contending that defendant, Iowa Beef Processors, Inc. (IBP) is collaterally estopped from denying that Louie Heller was its agent and that there are no other contested issues of material fact.¹

The defendant, IBP, contends that the doctrine of "the

¹ *Valley View*, 548 F.2d 1219 (5th Cir. 1977), rehearing denied, 551 F.2d 864, cert. denied, 434 U.S. 855 (1977); and *Lubbock Feed Lots v. Iowa Beef Processors, Inc.*, CA5-76-6.

law of the case" is applicable to these motions because the court has considered the exact question in these cases and the change in factual context relied upon by the plaintiffs as support for their motion does not warrant reconsideration.²

After consideration of the extensive briefs submitted in support of and in opposition to the motion of each plaintiff for summary judgment, the court is of the opinion that its original disposition of the issue is correct and that plaintiffs' motions should be DENIED.

The law to be applied in the determination of the effect to be given a prior federal court judgment is federal law. *Aerojet-General Corporation v. Askew*, 511 F.2d 710, 715-18 (5th Cir. 1975). Undoubtedly, the Fifth Circuit is moving away from the requirement of mutuality in the application of collateral estoppel. However, the parties have not cited a case of a court sitting in diversity applying Texas law of agency giving preclusive effect to a prior judgment to prevent a defendant from having a day in court.³ Further, as earlier stated, this court is not convinced that the jury verdicts of the prior cases were

² Plaintiffs urge that the recent Fifth Circuit decision affirming the *Lubbock Feed Lots* case, *supra*, and the change of Texas law evidenced by three recent Texas Civil Appellate court decisions are sufficient to warrant reconsideration of this issue. Defendant correctly points out that if the *Lubbock Feed Lot* decision supports the application of collateral estoppel, the prior *Valley View* decision alone was enough to support the first motion. Further, the defendant accurately notes that a change in Texas Appellate court decisions cannot serve as a precedent for this court to follow; a federal district court must still rely on the decisions of the highest state court.

³ The public policy favoring minimizing litigation is not served by preventing a litigant from ever having an opportunity to refute claims against them. 1B MOORE'S FEDERAL PRACTICE § 0.412[1] at 1809 (1965).

"necessarily determinative" of the issues involved in these cases.

It is so ORDERED.

The Clerks will furnish a copy hereof to each attorney.

ENTERED this 20th day of November A.D. 1978.

/s/ HALBERT O. WOODWARD

Halbert O. Woodward
Chief Judge
Northern District of Texas

Respectfully submitted,

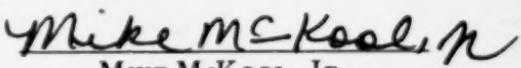
Mike McKool, Jr.
MIKE MCKOOL, JR.
CHARLES W. CUNNINGHAM
Counsel for Petitioners

Of Counsel:

JOHNSON & SWANSON
4700 Interfirst Two
Dallas, Texas 75270
(214) 653-2000

CERTIFICATE OF SERVICE

I hereby certify that three true and correct copies of the foregoing instrument were mailed by first-class mail this 24th day of January, 1984, to Mr. James T. Malysiak of Freeman, Rothe, Freeman & Salzman, P.C., 401 North Michigan Avenue, Suite 2700, Chicago, Illinois 60611, attorney for Iowa Beef Processors, Inc.


MIKE MCKOOL, JR.